
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

I.T.R. No. 113 of 1990

Date of decision: 12.03.2007

The Commissioner of Income-Tax, Patiala

...Petitioner

Versus

M/s Punjab Financial Corporation Ltd. Chandigarh

...Respondent

**CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL**

Present: Mr.Sanjiv Bansal, Advocate for the revenue.

RAJESH BINDAL, J.

Following questions of law have been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal) arising out of order dated 5.2.1983 passed in I.T.A.No. 49 of 1981, in respect of the assessment year 1977-78:-

- “1. Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in allowing the assessee's claim regarding interest due on sticky loans?
2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that deduction u/s 36(1) (viii) of I.T.Act, 1961, should be allowed @ 40% of the total income before making deduction u/s 36 (1) (viii) itself?
3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the disallowance of Rs.29402/- representing contribution made by the assessee corporation towards the Provident

Fund Act, 1925”

As far as questions No.1 and 2 are concerned, much facts are not required to be stated as learned counsel for the revenue has fairly conceded that the issues are covered against the revenue and in favour of the assessee vide order passed by this Court on August 26, 2004 in W.T.C. No.33 of 1985 (**The Commissioner of Income-Tax, Patiala Vs. M/s Punjab Financial Corporation Ltd., Chandigarh**) wherein petition filed by the revenue seeking reference of the above referred two questions was dismissed finding the same to be covered against the revenue by the judgments of the Hon'ble Supreme Court in **UCO Bank Vs. Commissioner of Income-tax (1999) 237 ITR 889** and **Commissioner of Income-tax Vs. Andhra Pradesh State Financial Corporation, (1998) 233 I.T.R. 195**, respectively.

Accordingly, both these questions are answered against the revenue and in favour of the assessee.

As far as question no.3 is concerned from a perusal of the order of assessment, it is revealed that the assessee had contributed a sum of Rs. 29,402/- under the Provident Fund Act, 1925 and claimed deduction in respect thereof. The same was negatived by the Assessing Officer for the reason that it was not permissible being not a recognised provident fund even if the State of Punjab had included the assessee's name in annexure/schedule to the Provident Fund Act, 1925 and the contributions have been made, the same is in violation of Section 36(1) (iv) of the Income Tax Act, 1961 (for short, 'the Act'). He further opined that as the deduction cannot be allowed under Section 36(1)(iv) of the Act, the same is also not admissible under Section 37 of the Act. In further appeal before the CIT (A), the assessee succeeded. The order of CIT (A) was upheld by the Tribunal. While doing so both the authorities below had relied upon the order passed by it in the case of Haryana Financial Corporation. The status of that case is not readily available with the counsel for the revenue. However, we have examined the case independently and are of the view that the opinion expressed by the Tribunal in the case is in conformity with law even though detailed discussion is not available on record.

Sections 30 to 36 of the Act provides for various deductions which are available while computing income from business and profession. Section 37 is a general Section which provides for deduction of any expenditure not included in any of the Sections 30 to 36 of the Act. The scope of Section 37 of the Act came up for consideration before the Kerala High Court in **Commissioner of Income-Tax, Kerala Vs. High Land Produce Co. Ltd. (1976) 102 ITR 803** wherein it was held that the provisions of Section 37 of the Act cannot be given a restricted meaning. Mere fact that the claim does not fall in any of the Sections 30 to 36 will not automatically make the claim unsustainable under Section 36 of the Act as well. Section 37 being a general Section, is for grant of deduction on certain accounts not enumerated in Sections 30 to 36 of the Act. It was further held as under:-

“We cannot give a meaning to the words 'in the nature of' so as to stultify a legitimate claim in accordance with the principles of accountancy and according to well-established commercial practice and which must be taken into account in ascertaining the true profits and gains of business. Unless there be some statutory provision which in clear terms or by necessary implication negatives against the adoption of such principles and practices, those principles and practices must be given their full play.”

The aforesaid judgment in High Land Produce Co. Ltd.'s case (supra) was upheld by the Hon'ble Supreme Court in **Commissioner of Income-Tax, Kerala Vs. High Land Produce Co. Ltd. (1986) 158 ITR 419**. Issue again came up for consideration before Gujarat High Court in **Khimji Visram and sons (Gujarat) Private Limited Vs. Commissioner of Income-Tax (1994) 209 ITR 993** wherein while referring to the judgment in High Land Produce Co. Ltd.'s case (supra) of the Kerala High Court, the proposition was summed up as under:-

“Considering the aforesaid judgments and the provisions of sections 30 to 36 and 37, it can be held that :-

(a) section 37 is required to be construed liberally;

(b) section 37 is of general nature and it operates in a wide range covering all expenditure laid out or expended wholly and exclusively for the purposes of the business or profession, which expenditure is not capital in nature or personal expenses of the assessee;

(c) it may take into account not only the day-to-day running expenses of a business but also the rationalisation of its administration and modernisation of its machinery; it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process and assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commencing or for the carrying on of a business; it may comprehend many other acts incidental to the carrying on of the business;

(d) unless there is express or implied prohibition under other provisions of Act, if the expenditure is covered by the provisions of section 37, then the necessary deduction is required to be given;

(e) the words “profits and gains” in trade are to be understood in their natural and proper sense, i.e. in a sense in which it is understood by a prudent businessman. Therefore, unless the Legislature intended a departure from the principle that an expenditure, laid out or expended wholly and exclusively for the purposes of the business, and which expenditure is not capital in nature or personal expenses it should not be allowed in computing the income from the business, deduction should be granted for the said expenses;

(f) sections 30 to 36 deal with specified expenses and for specific purposes. The nature of expenditure in those sections would be relatable only for the purposes

mentioned therein.”

Applying above principles in the present case, it is not disputed that assessee had contributed the provident fund for its employees under the Provident Fund Act, 1925. Further, it cannot be disputed that the expense was made wholly and exclusively for the purpose of business and was neither capital in nature nor personal expense of the assessee. Section 36 (1)(iv) of the Act does not debar specifically deduction on account of contribution made under the Provident Fund Act, 1925. It only talks about grant of deduction in respect of recognized provident fund. Keeping this in view, we do not find that any illegality has been committed by the Tribunal in rejecting the appeal of the revenue sustaining the deletion of disallowance of Rs. 29,402/- representing contribution made by the assessee towards provident fund.

Accordingly, question No.3 is also answered against the revenue and in favour of the assessee.

The reference is disposed of, accordingly.

(Rajesh Bindal)
Judge

March 12, 2007
Pka

(M.M.Kumar)
Judge
